

Douglas J. Buncher  
Texas Bar No. 03342700  
[dbuncher@neliganlaw.com](mailto:dbuncher@neliganlaw.com)  
David Ellerbe  
State Bar No. 06530600  
[dellerbe@neliganlaw.com](mailto:dellerbe@neliganlaw.com)  
NELIGAN FOLEY LLP  
325 N. St. Paul, Suite 3600  
Dallas, Texas 75201  
(214) 840-5300  
(214) 840-5301 (fax)

**Hearing Date: June 21, 2011 at 10:00 a.m. ET**

Counsel for Defendant Eco-Bat America, LLC

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re:	:	Chapter 11
	:	Case No. 05-44481 [RDD]
DPH HOLDINGS CORP., <i>et al.</i> ,	:	Jointly Administered
Reorganized Debtors :		
-----X		
	:	
DELPHI AUTOMOTIVE SYSTEMS,	:	
Plaintiff,	:	
	:	
v.	:	Adv. Pro. No. 07-02256 [RDD]
	:	
ECO-BAT AMERICA, LLC,	:	
Defendant.	:	
-----X		

**JOINDER OF ECO-BAT AMERICA, LLC IN SUR-REPLIES IN  
SUPPORT OF OPPOSITION TO REORGANIZED DEBTORS'  
MOTION FOR LEAVE TO FILE AMENDED COMPLAINTS**

1. Defendant Eco-Bat America, LLC ("Eco-Bat") hereby concurs with and joins the following Sur-Replies to the *Reorganized Debtors' Omnibus Reply in Further Support of Motions for Leave to File Amended Complaints* [case no. 05-44481, Docket No. 21096]:

a. Sur-Reply of Johnson Controls, Johnson Controls Battery Group, and Johnson Controls, Inc. in Further Opposition to Plaintiff's Motion for Leave to File a First Amended Complaint [case no. 05-44481, Docket No. 21312];

b. Methode Electronics, Inc.'s Sur-Reply in Support of its Objection to the Reorganized Debtors' Motion for Leave to File a First Amended Complaint [case no. 05-44481, Docket No. 21319];

c. Ex-Cell-O Machine Tools, Inc.'s Sur-Reply in Support of Response to Plaintiff's Motion for Leave to File a First Amended Complaint [case no. 05-44481, Docket No. 21321]; and

d. Sur-Reply of The Timken Company and The Timken Corporation in Further Opposition to Reorganized Debtors' Motion for Leave to File Amended Complaints [case no. 05-44481, Docket No. 21329].

2. Further, attached hereto as **Exhibit A** is a chart summarizing the specific arguments by Eco-Bat to which the Reorganized Debtors have failed to respond.

Dated: June 15, 2011

Respectfully Submitted,

/s/ David Ellerbe  
David Ellerbe  
Texas Bar No. 06530600  
[dellerbe@neliganlaw.com](mailto:dellerbe@neliganlaw.com)

NELIGAN FOLEY LLP  
325 N. St. Paul, Suite 3600  
Dallas, Texas 75201  
214-840-5300  
214-840-5301 (fax)

COUNSEL FOR DEFENDANT  
ECO-BAT AMERICA LLC

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2011, a true and correct copy of the foregoing pleading was served (a) by email upon all parties who receive notice in the above-captioned cases through the Court's ECF filing system and (b) by e-mail and first class mail, postage prepaid upon the following counsel for Delphi:

Cynthia J. Haffey  
Butzel Long  
Suite 100  
150 West Jefferson Ave.  
Detroit, MI 48226

/s/ David Ellerbe  
David Ellerbe

## **EXHIBIT “A”**

**CASE NO. 07-2256**

**CAPTION: Delphi Automotive Systems, LLC v. Eco-Bat America, LLC**

**DEFENDANT COUNSEL CONTACT: David Ellerbe, Neligan Foley LLP**

Global Issue		Objection Raised	DPH Holdings Response
<b>Twombly/Iqbal</b>			
	<b>Antecedent Debt</b>		
	<ul style="list-style-type: none"> <li>• None alleged</li> </ul>		
	<ul style="list-style-type: none"> <li>• None alleged for certain transfers</li> </ul>		
	<ul style="list-style-type: none"> <li>• Debt not owed by Plaintiff</li> </ul>	<b>Yes. Plaintiff fails to allege or show that transfers were made on account of debt owed by DAS.</b>	<b>¶¶ 41-44</b>
	<ul style="list-style-type: none"> <li>• Meaningless description</li> </ul>	<b>Plaintiff fails to provide, and denies existence of, invoice numbers. Purchaser order or shipping numbers are not recognizable. Plaintiff has failed to provide copies of documents or other information.</b>	<b>None</b>
	<ul style="list-style-type: none"> <li>• Other Issues</li> </ul>	<b>Plaintiff failed to allege or show when alleged debts relevant to transfers arose or that the alleged debts arose prior to related transfers. Purchase orders only indicate placement of an order, not evidence of shipment or a debt.</b>	<b>More specificity not required. Mere payment or existence of a general purchase agreement is evidence of antecedent debt.</b>

Global Issue		Objection Raised	DPH Holdings Response
	<b>Insolvency</b>	<p><b>Yes. Schedules rebut the presumption of insolvency because DAS assets on petition date exceeded liabilities.</b></p> <p><b>DAS parent, Delphi, was solvent (distributed dividend to shareholders).</b></p> <p><b>Delphi represented to Court and all parties that it would seek confirmation of 100% payment plan of reorganization.</b></p>	<p><b>No specific response. Relies only on statutory presumption of insolvency. Also, see ¶¶ 50-57.</b></p> <p><b>None</b></p> <p><b>None</b></p>
	<b>Failure to plead that Plaintiff was obligor</b>	<b>Yes. Plaintiff fails to allege or show that transfers were made on account of debt owed by DAS.</b>	<b>¶¶ 41-44</b>
<b>Other Futility Arguments</b>			
	<b>Relationship Back for additional transfers raised in Amended Complaints</b>	<b>Yes. Proposed Amended Complaint asserts new claims totaling \$2,445,345.57. Relation back not permissible because, <i>inter alia</i>, original complaint did not put Eco-Bat on notice that additional transfers would be asserted later.</b>	<b>No response. Footnote 5 incorrectly contends that this issue “is not suited for resolution at the Hearing” on the Motion for Leave to File Amended Complaints.</b>

Global Issue		Objection Raised	DPH Holdings Response
Other			
	Judicial Estoppel	Debtors took inconsistent positions. Originally said would not prosecute avoidance actions other than against certain specific parties, then changed course.	None
	Laches	Eco-Bat would be prejudiced by preference claim because it could have repaid preferential transfers and sold resulting § 502(h) claim for more than 100%; could have objected to extensions requested by Debtors or taken other protective or defensive actions if it had known of preference action; and could have sought dismissal of preference action on grounds that DAS was solvent and proposing 100% plan.	None